

Hearing Date:
October 12, 2000
at 10:00 a.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	:	Chapter 11
	:	
Randall's Island Family	:	Case No. 00 B 41065 (SMB) through
Golf Centers, Inc., et al.	:	No. 00 B 41196 (SMB)
	:	Jointly Administered
	:	

**OBJECTION OF N. P. LIMITED PARTNERSHIP TO DEBTORS' MOTION
FOR ORDER PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY
CODE EXTENDING THE TIME WITHIN WHICH THE
DEBTORS-IN-POSSESSION MUST ELECT TO ASSUME OR REJECT
THEIR UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

N. P. Limited Partnership, an Ohio limited partnership ("NP"), objects to the Motion For Order Pursuant To Section 365(d)(4) Of The Bankruptcy Code Extending The Time Within Which The Debtors-In-Possession Must Elect To Assume or Reject Their Unexpired Leases of Nonresidential Real Property filed on or about September 22, 2000 (the "Motion") and requests the Court to deny that Motion. In support of this Objection, NP states as follows:

1. NP is the owner and landlord for the property known as Golden Bear Golf Center at Polaris located in the Columbus/Westerville, Ohio vicinity (the "Premises"). NP entered into a Ground Lease (Exhibit A)¹ with a predecessor of the Debtors, Ables Golf Center Limited

¹ Copies of any Exhibit will be provided to parties-in-interest upon request made to the undersigned counsel.

Partnership for the Premises on September 15, 1988 (the "Lease"). In November, 1999, GBGC Family Golf Centers, Inc. entered into an Amendment of Lease (Exhibit B) for that Lease with NP.

2. Pursuant to Section 3.02 of the Lease, the Debtors are to pay all real property taxes, special taxes, and assessments relating to the Premises. The Debtors have failed to pay the real estate taxes for the second half of 1999 that were due July 10, 2000. A copy of the tax bill (without the penalty added) is attached as Exhibit C. The Debtors' liability for the real estate taxes is \$44,269.32, plus a 10% penalty (\$4,426.93), for a total of \$48,696.25.

3. NP is being harmed by the failure of the Debtors to assume the subject Lease and to pay the real estate taxes due under the Lease. Further, damages will continue to accrue to NP if the Debtors do not pay the real estate taxes which are due to the Delaware County, Ohio Treasurer.

4. As this Court is aware, Bankruptcy Code §365(d)(4) provides as follows:

Notwithstanding paragraphs (1) and (2), in a case under chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

As the Debtors have noted in the Memorandum in Support of the Motion, the majority of courts have held that an extension of the original 60-day period to assume or reject nonresidential real estate leases may be granted after the 60-day period expires as long as the motion seeking the extension of that period is filed within the 60-day period. Further, a number of courts have held that a further extension can be granted as long as the original extension is timely.

5. However, courts have held that the following factors weigh against the granting of an extension of time: a) failure to pay for the use of property or to pay the rent reserved in the lease; b) damage to the lessor through the debtors continued occupation of the land and its failure to pay taxes; and c) the debtor's failure to formulate a plan after it has had sufficient time to do so.

Consideration of those factors and other relevant factors determine whether the requested extension should be granted and, if so, under what conditions. See Theatre Holding Corp. v. Mauro, 681 F.2d 102 (2nd Cir. 1982); In re S & M Food Services, Inc., 117 B.R. 497 (Bankr. E. D. Mo. 1990); and In re Columbus One Parcel Service, Inc., 138 B.R. 194 (Bankr. S.D. Ohio 1992).

6. In this case, the relevant factors militate against extension of the time to assume or reject the Debtors' real property leases, at least as relates to the Debtors' Lease with NP. In this case, the real estate taxes are delinquent in the amount of \$48,696.25. NP is being harmed as a result of the Debtors' failure to pay the real estate taxes. If the Debtors do not assume the Lease and bring the real estate taxes current, NP will have to do so as the owner of the Premises. Taxes will continue to accrue to the injury of NP unless the Lease is promptly assumed. Furthermore, this case is now five months old. The Bankruptcy Code gives debtors 60 days to assume commercial real estate leases. The Debtors have now had 150 days or 250% of the time presumed by the Code to be sufficient to enable those decisions to be made. The Debtors have had sufficient time to assess the viability of its real property leases and to make decisions whether to assume or reject each of those leases.

Accordingly, for the foregoing reasons, N. P. Limited Partnership objects to the Motion For Order Pursuant To Section 365(d)(4) of the Bankruptcy Code Extending The Time Within Which

The Debtors-In-Possession Must Elect To Assume or Reject Their Unexpired Leases of Nonresidential Real Property filed on September 22, 2000 and requests the Court to deny that Motion.

Dated: October 6, 2000

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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing **OBJECTION OF N. P. LIMITED PARTNERSHIP TO DEBTORS' MOTION FOR ORDER PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE EXTENDING THE TIME WITHIN WHICH THE DEBTORS-IN-POSSESSION MUST ELECT TO ASSUME OR REJECT THEIR UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY** was served upon: **a)** Fried, Frank, Harris, Shriver & Jacobson, One New York Plaza, New York, New York 10004 (Attn: Gerald C. Bender), **b)** the Office of the United States Trustee, 33 Whitehall Street, New York, New York 10004 (Attn: Brian Masumoto), and **c)** Berlack, Israels & Liberman, LLP, 120 West 45th Street, New York, New York 10036 (Attn: Edward S. Weisfelner) by U.S. Express Mail, postage prepaid, this 6th day of October, 2000.

Guy R. Humphrey (Ohio Bar #0022316)